

**DIGEST OF  
UNITED STATES PRACTICE  
IN INTERNATIONAL LAW  
2014**

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## Introduction

I am delighted to introduce the annual edition of the *Digest of United States Practice in International Law* for 2014. This volume provides a historical record of developments during calendar year 2014. The State Department publishes the official version of the *Digest* exclusively on-line to make U.S. views on international law more quickly and readily accessible to our counterparts in other governments, and to international organizations, scholars, students, and other users, both within the United States and around the world.

The United States made presentations before three UN human rights-based committees in Geneva in 2014 regarding its human rights record. In March, the United States presented its periodic report concerning the International Covenant on Civil and Political Rights (“ICCPR”). In August, the United States made its presentation to the Committee on the Elimination of Racial Discrimination (“CERD”). And the presentation to the UN Committee Against Torture (“CAT”) took place in November. These presentations provided an opportunity for the United States to review and reflect on our record and demonstrate our commitment to protecting human rights.

The United States negotiated and concluded several significant treaties, other international agreements, and arrangements in 2014. For example, negotiations with France resulted in an agreement regarding compensation for victims who were deported by rail from France to Nazi labor and death camps during the Holocaust. The Governments of Afghanistan and the United States signed the Security and Defense Cooperation Agreement. In the realm of trade and investment, the United States continued to pursue the Trans-Pacific Partnership (“TPP”) and Transatlantic Trade and Investment Partnership (“TTIP”) agreements, while participating in negotiations of an Environmental Goods Agreement and a new Trade in Services Agreement. The permanent five members of the UN Security Council and Germany, coordinated by the European Union, extended negotiations with Iran under the Joint Plan of Action (“JPOA”) toward a final deal constraining Iran’s nuclear program. A Protocol to the Treaty on a Nuclear-Weapon-Free Zone In Central Asia was signed, the agreement for peaceful nuclear cooperation with the Republic of Korea was extended, and two agreements for peaceful nuclear cooperation entered into force, including the agreement between the American Institute in Taiwan (“AIT”) and the Taipei Economic and Cultural Representative Office in the United States (“TECRO”) and the agreement between the United States and Vietnam. Also in 2014, the United States signed a maritime boundary treaty with Micronesia and several bilateral maritime law enforcement agreements. And the U.S. Senate gave its advice and consent to ratification of four fisheries conventions and agreements in 2014.

The U.S. government also participated in litigation and arbitration involving issues related to foreign policy and international law in 2014. The United States government filed briefs in several cases before the U.S. Supreme Court, including: *Zivotofsky v. Kerry*, regarding a law directing the Executive Branch to list “Israel” as the

place of birth in passports and other official documents for certain individuals born in Jerusalem, contrary to U.S. foreign policy relating to the status of Jerusalem; *OBB v. Sachs*, involving claims against Austria’s state-owned railway and the interpretation of the Foreign Sovereign Immunity Act’s commercial activity exception; *NML v. Argentina* regarding the scope of discovery into foreign sovereign assets; *Kerry v. Din*, involving the denial of a visa to the spouse of a U.S. citizen on terrorism related grounds; and two cases involving claims against military contractors, *Kellogg Brown & Root Servs., Inc., (“KBR”) v. Harris* and *KBR v. Metzgar*. The United States also participated in a wide range of litigation matters at other levels, including cases challenging U.S. policy and practice regarding passports, citizenship, and visas; cases brought by law of war detainees and former detainees; and cases concerning foreign sovereign and official immunity. The U.S. Supreme Court also issued a number of important decisions relating to international law or foreign policy, including: *Bond v. United States*, relating to implementation of the Chemical Weapons Convention; *Lozano v. Alvarez*, regarding interpretation of the Hague Abduction Convention; *BG Group v. Argentina*, relating to jurisdictional prerequisites for arbitration pursuant to an investment treaty; and *Daimler v. Bauman*, regarding jurisdiction over foreign entities in U.S. courts. In arbitral proceedings, the Iran U.S. Claims Tribunal issued its final award in Case A/15(IV), and a NAFTA arbitral tribunal, constituted to consider claims brought against the United States by Canadian pharmaceutical firms, Apotex Holdings Inc. and Apotex Inc., issued its award, rejecting all claims.

This year’s *Digest* also discusses U.S. participation in international organizations, institutions, and initiatives. The United States provided the impetus for and strongly supported several notable resolutions adopted by the UN Security Council in 2014, including: resolution 2178 on foreign terrorist fighters (“FTFs”); resolution 2166, demanding that armed groups in Ukraine allow international investigation of the downing of Malaysia Air flight MH17; and resolutions 2139, 2165, and 2191 on access for humanitarian assistance to Syria. The United States provided comments and information to the International Law Commission (“ILC”) on several topics, including expulsion of aliens, identification of customary international law, the effects of armed conflict on treaties, and U.S. practice relating to the provisional application of treaties. The United States responded to the High Commissioner for Human Rights on the right to privacy and other human rights in the digital age. The United States informed the UN Security Council of an operation to capture Abu Khatallah in Libya, as well as its operations against ISIL in Iraq and Syria and against the Khorasan Group in Syria. The United States filed formal objections with the UN Secretariat to the Palestinians’ efforts to accede to certain treaties. And the United States welcomed the re-election of Judge Donoghue to the International Court of Justice.

The Executive Branch issued policies, programs, orders, and studies with international legal implications in 2014. For example, the Department of State issued new policy guidance regarding citizenship of children born abroad through the use of assisted reproductive technology (“ART”) and established an in-country refugee/parole program in El Salvador, Guatemala, and Honduras to provide an alternative to unaccompanied children migrating to the United States unlawfully. The United States announced a new policy on anti-personnel landmines, committing not to produce or otherwise acquire any anti-personnel munitions that are not compliant with the Ottawa

Convention. The President issued new executive orders authorizing sanctions in response to Russia's intervention in Ukraine. And the United States resumed operations of its embassy in the Central African Republic and announced the beginning of the process of re-establishing diplomatic relations with Cuba. The United States also issued sixteen detailed studies of countries' maritime claims and maritime boundaries in its *Limits in the Seas* series, covering archipelagic claims around the world as well as China's claims in the South China Sea.

Many attorneys in the Office of the Legal Adviser collaborate in the annual effort to compile the *Digest*. For the 2014 volume, attorneys whose voluntary contributions to the *Digest* were particularly significant include Henry Azar, Kevin Baumert, David Bigge, Jay Bischoff, Jamie Briggs, David Buchholz, Michael Coffee, Laura Conn, David DeBartolo, Peter Guthrie, Tom Heinemann, Julie Herr, David Huitema, Kimberly Jackson, Joseph Khawam, Theodore Kill, Emily Kimball, Jeffrey Kovar, Mike Mattler, Michael Meier, Holly Moore, Beth O'Connor, Judy Osborn, Sabeena Rajpal, David Salie, Tim Schnabel, Neha Sheth, Gabriel Swiney, Jesse Tampio, Wynne Teel, Alec Ugol, Amanda Wall, and Jeremy Weinberg. Sean Elliott at the Foreign Claims Settlement Commission also provided valuable input. I express very special thanks to Joan Sherer, the Department's Senior Law Librarian, and to Jerry Drake, our bureau's records manager, assisted by Anthony Stampone, for their technical assistance in transforming drafts into the final published version of the *Digest*. Finally, I thank CarrieLyn Guymon for her continuing, outstanding work as editor of the *Digest*.

Mary E. McLeod  
Acting Legal Adviser  
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## Note from the Editor

The official version of the *Digest of United States Practice in International Law* for calendar year 2014 is published exclusively on-line on the State Department's website. I would like to thank my colleagues in the Office of the Legal Adviser and those in other offices and departments in the U.S. government who make this cooperative venture possible and aided in the timely release of this year's *Digest*.

The 2014 volume follows the general organization and approach of past volumes. We rely on the texts of relevant original source documents introduced by relatively brief explanatory commentary to provide context. Some of the litigation related entries do not include excerpts from the court opinions because most U.S. federal courts now post their opinions on their websites. In excerpted material, four asterisks are used to indicate deleted paragraphs, and ellipses are used to indicate deleted text within paragraphs.

Entries in each annual *Digest* pertain to material from the relevant year, although some updates (through May 2015) are provided in footnotes. For example, we note the release of U.S. Supreme Court and other court decisions, as well as other noteworthy developments occurring during the first several months of 2015 where they relate to the discussion of developments in 2014.

Updates on most other 2014 developments, such as the release of annual reports and sanctions-related designations of individuals or entities under U.S. executive orders are not provided, and as a general matter readers are advised to check for updates. This volume also continues the practice of providing cross references to related entries within the volume and to prior volumes of the *Digest*.

As in previous volumes, our goal is to ensure that the full texts of documents excerpted in this volume are available to the reader to the extent possible. For many documents we have provided a specific internet citation in the text. We realize that internet citations are subject to change, but we have provided the best address available at the time of publication. Where documents are not readily accessible elsewhere, we have placed them on the State Department website, at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

Other documents are available from multiple public sources, both in hard copy and from various online services. The United Nations Official Document System makes UN documents available to the public without charge at <http://www.un.org/en/documents/ods/>. For UN-related information generally, the UN's home page at [www.un.org](http://www.un.org) also remains a valuable source. Resolutions of the UN Human Rights Council can be retrieved most readily by using the search function on the Human Rights Council's website, at <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Documents.aspx>. Legal texts of the World Trade Organization ("WTO") may be accessed through the WTO's website, at [www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm).

The U.S. Government Printing Office ("GPO") provides electronic access to government publications, including the Federal Register and Code of Federal Regulations; the Congressional Record and other congressional documents and reports;

the U.S. Code, Public and Private Laws, and Statutes at Large; Public Papers of the President; and the Daily Compilation of Presidential Documents. The Federal Digital System, available at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys), is GPO's online site for U.S. government materials.

On treaty issues, this site offers Senate Treaty Documents (for the President's transmittal of treaties to the Senate for advice and consent, with related materials), available at [www.gpo.gov/fdsys/browse/collection.action?collectionCode=CDOC](http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=CDOC), and Senate Executive Reports (for the reports on treaties prepared by the Senate Committee on Foreign Relations), available at [www.gpo.gov/fdsys/browse/collection.action?collectionCode=CRPT](http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=CRPT). In addition, the Office of the Legal Adviser provides a wide range of current treaty information at <http://www.state.gov/s/l/treaty> and the Library of Congress provides extensive treaty and other legislative resources at <http://beta.congress.gov/>.

The U.S. government's official web portal is [www.usa.gov](http://www.usa.gov), with links to government agencies and other sites; the State Department's home page is [www.state.gov](http://www.state.gov).

While court opinions are most readily available through commercial online services and bound volumes, individual federal courts of appeals and many federal district courts now post opinions on their websites. The following list provides the website addresses where federal courts of appeals post opinions and unpublished dispositions or both:

U.S. Court of Appeals for the District of Columbia Circuit:

[www.cadc.uscourts.gov/bin/opinions/allopinions.asp](http://www.cadc.uscourts.gov/bin/opinions/allopinions.asp);

U.S. Court of Appeals for the First Circuit:

<http://www.ca1.uscourts.gov/opinions/main.php>;

U.S. Court of Appeals for the Second Circuit:

<http://www.ca2.uscourts.gov/decisions.html>;

U.S. Court of Appeals for the Third Circuit:

<http://www.ca3.uscourts.gov/search-opinions>;

U.S. Court of Appeals for the Fourth Circuit:

<http://pacer.ca4.uscourts.gov/opinions/opinion.htm>;

U.S. Court of Appeals for the Fifth Circuit:

[www.ca5.uscourts.gov/Opinions.aspx](http://www.ca5.uscourts.gov/Opinions.aspx);

U.S. Court of Appeals for the Sixth Circuit:

[www.ca6.uscourts.gov/opinions/opinion.php](http://www.ca6.uscourts.gov/opinions/opinion.php);

U.S. Court of Appeals for the Seventh Circuit:

<http://media.ca7.uscourts.gov/opinion.html>;

U.S. Court of Appeals for the Eighth Circuit:

[www.ca8.uscourts.gov/all-opinions](http://www.ca8.uscourts.gov/all-opinions)

U.S. Court of Appeals for the Ninth Circuit:

[www.ca9.uscourts.gov/opinions/](http://www.ca9.uscourts.gov/opinions/) (opinions) and

[www.ca9.uscourts.gov/memoranda/](http://www.ca9.uscourts.gov/memoranda/) (memoranda and orders—unpublished dispositions);

U.S. Court of Appeals for the Tenth Circuit:

[www.ca10.uscourts.gov/clerk/opinions.php](http://www.ca10.uscourts.gov/clerk/opinions.php);

U.S. Court of Appeals for the Eleventh Circuit:

<http://www.ca11.uscourts.gov/published-opinions;>  
U.S. Court of Appeals for the Federal Circuit:  
<http://www.ca11.uscourts.gov/opinions-orders/0/all>.

The official U.S. Supreme Court website is maintained at [www.supremecourtus.gov](http://www.supremecourtus.gov). The Office of the Solicitor General in the Department of Justice makes its briefs filed in the Supreme Court available at [www.justice.gov/osc](http://www.justice.gov/osc). Many federal district courts also post their opinions on their websites, and users can access these opinions by subscribing to the Public Access to Electronic Records (“PACER”) service.

Some district courts post all of their opinions or certain notable opinions without requiring users to register for PACER first. For example, the U.S. District Court for the District of Columbia posts its opinions on its website at [www.dcd.uscourts.gov/dcd](http://www.dcd.uscourts.gov/dcd). Other links to individual federal court websites are available at [www.uscourts.gov/links.html](http://www.uscourts.gov/links.html).

Selections of material in this volume were made based on judgments as to the significance of the issues, their possible relevance for future situations, and their likely interest to government lawyers, especially our foreign counterparts; scholars and other academics; and private practitioners.

As always, we welcome suggestions from those who use the *Digest*.

*CarrieLyn D. Guymon*